

AMENDED IN ASSEMBLY MARCH 31, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

## ASSEMBLY BILL

**No. 984**

**Introduced by Assembly Member Laird**

February 18, 2005

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An act to ~~amend Section 3501 of~~ add Section 1714.43 to the Civil Code, relating to ~~nuisance liability~~.

### LEGISLATIVE COUNSEL'S DIGEST

AB 984, as amended, Laird. ~~Private nuisance: remedies~~ *Liability: genetically engineered plants.*

*Under existing law, everyone is generally responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself.*

*This bill would provide that the manufacturer of a genetically engineered plant, as defined, is liable to any producer, grain and seed cleaner, handler, or processor injured by the release of that plant into California. The bill would authorize the prevailing plaintiff in an action under these provisions to recover compensatory damages for injury, reasonable attorney's fees, and other litigation expenses. The bill would provide that a manufacturer has a defense to liability if specified conditions are met or if the gross negligence of another caused the injury. The bill would provide that the liability created by these provisions may not be waived or otherwise avoided by contract or other means. The bill would further make legislative findings and declarations regarding California's agricultural industry and the impact that genetically modified plants may have upon that industry.*

~~Existing law specifies the remedies for a private nuisance.  
This bill would make technical, nonsubstantive changes to that  
provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 3501 of the Civil Code is amended to~~  
2     ~~read:~~  
3     ~~SECTION 1. The Legislature finds and declares all of the~~  
4     ~~following:~~  
5     ~~(a) Agricultural industries are vital components of~~  
6     ~~California's economy, creating 1.1 million jobs in the state.~~  
7     ~~(b) California is the leading agricultural state in the country,~~  
8     ~~producing more than 250 commodities and farm gate revenues~~  
9     ~~totaling nearly \$30 billion dollars annually, of which nearly \$6.5~~  
10    ~~billion dollars is from exports.~~  
11    ~~(c) California is a leading producer of organic crops,~~  
12    ~~producing more than 200 products totaling \$605 million dollars~~  
13    ~~in 2003.~~  
14    ~~(d) California has a unique, national reputation for producing~~  
15    ~~high quality crops and its agricultural heritage is dependent on~~  
16    ~~maintaining this reputation.~~  
17    ~~(e) More than 97 percent of California farms are family farms~~  
18    ~~or partnerships.~~  
19    ~~(f) California has a diverse agricultural bounty, including~~  
20    ~~many specialty crop commodities.~~  
21    ~~(g) Genetically engineered plants have been shown to be~~  
22    ~~dispersed into the environment through pollen drift, seed~~  
23    ~~commingling, and inadvertent transfer of seeds by humans,~~  
24    ~~animals, and weather events.~~  
25    ~~(h) The unintended presence of genetically engineered plants~~  
26    ~~and material in agricultural crops can have devastating~~  
27    ~~economic impacts for producers who sell in organic markets and~~  
28    ~~foreign markets that prohibit or reject products that contain~~  
29    ~~genetically engineered material.~~  
30    ~~(i) The liability for the uncontrollable movement of genetically~~  
31    ~~engineered material is being unfairly passed from manufacturers~~

1 of genetically engineered plants to innocent and unsuspecting  
2 farmers.

3 (j) It is in the interest of the state to ensure that the use of  
4 genetically engineered plants in California for agricultural  
5 purposes is conducted in a manner that does not result in  
6 economic loss resulting from the unintended presence of  
7 genetically engineered materials in crops other than those for  
8 which the use is authorized by the manufacturer. It is further in  
9 the interest of the state to ensure that innocent farmers and farm  
10 businesses are shielded from legal liability for the presence of  
11 genetically engineered material in their crops without their  
12 knowledge and beyond their control.

13 SEC. 2. Section 1714.43 is added to the Civil Code, to read:

14 1714.43. (a) As used in this section, the following definitions  
15 apply:

16 (1) "Farm product" includes every agricultural, horticultural,  
17 viticultural, or vegetable product of the soil, honey and beeswax,  
18 oilseeds, poultry, poultry product, livestock product, and  
19 livestock for immediate slaughter. It does not include timber or  
20 any timber product, milk or any milk product, any aquacultural  
21 product, or cattle sold to any person who is bonded under the  
22 federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et  
23 seq.).

24 (2) "Genetically engineered plant" means a plant or any plant  
25 part or material, including, but not limited to, seeds and pollen,  
26 in which the genetic material has been changed through modern  
27 biotechnology in a way that does not occur naturally by  
28 multiplication or natural recombination.

29 (3) "Grain and seed" means any grain, seeds, rice, beans, and  
30 any other farm product that is customarily cleaned by grain and  
31 seed cleaners.

32 (4) "Grain and seed cleaner" means a person that is lawfully  
33 engaged in the business of cleaning grain and seeds for others.

34 (5) "Handler" means any person engaged in this state in the  
35 business of marketing farm products, including persons engaged  
36 in the drying, milling, or storing of a farm product.

37 (6) "Injury" means economic damage or loss, including, but  
38 not limited to, all of the following:

39 (A) Loss of any price premium that would have accrued to a  
40 producer, grain and seed cleaner, handler, or processor by

1 contract or other marketing arrangement or that would have  
2 been otherwise reasonably available to those entities through  
3 ordinary commercial channels.

4 (B) Any additional transportation, storage, handling, or  
5 related charges or costs incurred by the producer, grain and  
6 seed cleaner, handler, or processor that would not have been  
7 incurred in the absence of genetically engineered plant material.

8 (C) Any judgment, charge, or penalty for which the producer,  
9 grain and seed cleaner, handler, or processor of nongenetically  
10 engineered products is liable because of breach of contract,  
11 including loss of organic certification for failure to deliver a  
12 crop or shipment free of genetically engineered plant material or  
13 for delivering a crop or shipment exceeding any contractually  
14 agreed tolerances for the presence of genetically engineered  
15 plant material.

16 (D) Market price reductions incurred by a producer, grain  
17 and seed cleaner, handler, or processor, resulting from loss of  
18 farm product exports, including foreign and domestic markets.

19 (E) Loss of livelihood or reputation of a producer, grain and  
20 seed cleaner, handler, or processor caused by the presence of a  
21 genetically engineered plant material in the farm product of  
22 those entities.

23 (7) "Manufacturer" means a person, corporation, or any  
24 other entity producing or commercializing a genetically  
25 engineered plant.

26 (8) "Modern biotechnology" means the application of in vitro  
27 nucleic acid techniques, fusion of cells, including protoplast  
28 fusion, or hybridization techniques beyond the taxonomic family  
29 that overcome natural physiological, reproductive, or  
30 recombination barriers and that are not techniques used in  
31 traditional breeding and selection, including, but not limited to,  
32 all of the following:

33 (A) Recombinant deoxyribonucleic acid (DNA).

34 (B) Direct injection of nucleic acid into cells or organelles.

35 (C) Recombinant DNA techniques that use vector systems and  
36 techniques involving the direct introduction into the organism of  
37 hereditary materials prepared outside the organism, such as  
38 micro-injection, macro-injection, chemoporation,  
39 electroporation, micro-encapsulation, and liposome fusion.

1 (9) “Person” includes any individual, partnership, limited  
2 liability company, limited liability partnership, corporation, firm,  
3 company, or any other entity doing business in California.

4 (10) “Processor” means any person engaged in the business  
5 of processing or manufacturing any farm product that solicits,  
6 buys, contracts to buy, or otherwise takes title to, or possession  
7 or control of, any farm product from the producer of the farm  
8 product for the purpose of processing or manufacturing it and  
9 selling, reselling, or redelivering it in any dried, canned,  
10 extracted, fermented, distilled, frozen, eviscerated, or other  
11 preserved or processed form. It does not, however, include any  
12 retail merchant that has a fixed or established place of business  
13 in this state and does not sell at wholesale any farm product that  
14 is processed or manufactured by that merchant.

15 (11) “Producer” means any person that is engaged in the  
16 business of growing or producing any farm product.

17 (b) (1) The manufacturer of a genetically engineered plant is  
18 liable to any producer, grain and seed cleaner, handler, or  
19 processor injured by the release of the genetically engineered  
20 plant into California. The prevailing plaintiff in an action under  
21 this section may recover compensatory damages for injury,  
22 reasonable attorney’s fees, and other litigation expenses.

23 (2) The liability created by this section may not be waived or  
24 otherwise avoided by contract or other means.

25 (3) A producer who is not in breach of a contract for the  
26 purchase or use of a genetically engineered plant and who  
27 unknowingly comes into possession of or uses that genetically  
28 engineered plant as a result of natural reproduction and  
29 cross-pollination, seed mixing, or other commingling or  
30 unintended presence shall not be liable for any injuries, claims,  
31 losses, or expenses, including attorney’s fees and damages for  
32 infringement of any patent right held by the manufacturer of that  
33 genetically engineered plant, caused by the use of the genetically  
34 engineered plant.

35 (c) A manufacturer shall have a defense to liability under this  
36 section if the court finds either of the following:

37 (1) That all of the following conditions are met:

38 (A) The producer or his or her agent acted in gross  
39 negligence.

1     (B) The producer received and signed a contract with the  
2 manufacturer.

3     (C) The producer received a training manual from the  
4 manufacturer.

5     (D) The court finds that the injury would not have occurred  
6 had the producer or his or her agent followed the terms of the  
7 manufacturer's contract and training manual.

8     (2) Any person not included under paragraph (1) acted in a  
9 grossly negligent manner that caused injury from the use of a  
10 genetically engineered plant manufactured by the manufacturer.

11     (d) (1) A seed contract for the purchase of seeds or plant  
12 parts in California is governed by the laws of California.

13     (2) Any provision of a seed contract executed in California  
14 that purports to waive the provisions of this section, to choose  
15 the laws of another jurisdiction to govern the contract, or to  
16 choose a forum for adjudication of disputes arising out of the  
17 contract that would not otherwise have jurisdiction over the  
18 parties to the contract, is void and unenforceable.

19     (3) The proper venue for an action under this section is the  
20 superior court in the county in which the injury is alleged to have  
21 occurred.

22     (e) The provisions of this section are severable. If any  
23 provision of this section or its application is held invalid, that  
24 invalidity shall not affect other provisions or applications that  
25 can be given effect without the invalid provision or application.

26     ~~3501. The remedies against a private nuisance are either or~~  
27 ~~both of the following:~~

28     ~~(a) A civil action.~~

29     ~~(b) Abatement.~~